

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 194

Introduced by Nantkes, 46.

Read first time January 12, 2009

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to workers' compensation; to amend sections
2 48-138, 48-139, 48-140, and 48-141, Reissue Revised
3 Statutes of Nebraska; to change provisions relating
4 to lump-sum settlements; and to repeal the original
5 sections.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-138, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-138 The amounts of compensation payable periodically
4 under the law by agreement of the parties with the approval of
5 the Nebraska Workers' Compensation Court may be commuted to one
6 or more lump-sum payments, except compensation due for death,
7 permanent disability, or claimed permanent disability which may be
8 commuted ~~only upon the order or decision of the compensation court~~
9 ~~pursuant to~~ as provided in section 48-139. ~~If~~ ~~PROVIDED,~~ ~~that when~~
10 commutation is agreed upon pursuant to this section or ~~approved by~~
11 ~~order pursuant to~~ section 48-139, the lump sum to be paid shall be
12 fixed at an amount which will equal the total sum of the probable
13 future payments, capitalized at their present value upon the basis
14 of interest calculated at five percent per annum with annual rests.

15 The fee of the clerk of the compensation court for
16 filing, docketing, and indexing an agreement submitted for approval
17 as provided in this section shall be fifteen dollars. The fees
18 shall be remitted by the clerk to the State Treasurer for credit to
19 the Compensation Court Cash Fund.

20 Sec. 2. Section 48-139, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 48-139 (1) Whenever an injured employee or his or
23 her dependents and the employer agree that the amounts of
24 compensation due as periodic payments for death, permanent
25 disability, or claimed permanent disability under the Nebraska

1 Workers' Compensation Act shall be commuted to one or more lump-sum
2 payments;

3 (a) If the employee is not represented by counsel, such
4 settlement or agreement therefor shall be submitted to the Nebraska
5 Workers' Compensation Court ~~in the following manner:~~ for approval
6 as provided in subsection (2) of this section: and

7 If the employee is represented by counsel, a release
8 shall be filed with the compensation court as provided in
9 subsection (3) of this section.

10 (2)(a) An application for an order approving such a
11 lump-sum settlement or agreement and a duplicate original of such
12 application, both signed and verified by both parties, shall be
13 filed with the clerk of the ~~Nebraska Workers' Compensation Court~~
14 compensation court and shall be entitled the same as an action by
15 such employee or dependents against such employer. The application
16 shall contain a concise statement of the terms of the settlement or
17 agreement sought to be approved with a brief statement of the facts
18 concerning the injury, the nature thereof, the wages received by
19 the injured employee prior thereto, the nature of the employment,
20 and such other matters as may be required by the compensation
21 court. The application may provide for payment of future medical
22 expenses incurred by the employee. The compensation court may hold
23 a hearing on the application at a time and place selected by
24 the compensation court, and proof may be adduced and witnesses
25 subpoenaed and examined the same as in an action in equity.

1 **(b)** If the compensation court finds such settlement or
2 agreement is made in conformity with the compensation schedule and
3 for the best interests of the employee or his or her dependents
4 under all the circumstances, the compensation court shall make an
5 order approving the same. If such agreement or settlement is not
6 approved, the compensation court may dismiss the application at the
7 cost of the employer or continue the hearing, in the discretion of
8 the compensation court.

9 **(c)** Every such lump-sum settlement or agreement approved
10 by order of the compensation court shall be final and conclusive
11 unless procured by fraud. Upon paying the amount approved by the
12 compensation court, the employer ~~(1)~~ **(i)** shall be discharged from
13 further liability on account of the injury or death, other than
14 liability for the payment of future medical expenses if such
15 liability is approved by the compensation court on the application
16 of the parties, and ~~(2)~~ **(ii)** shall be entitled to a duly executed
17 release. Upon filing the release or other proof of payment, the
18 liability of the employer under any agreement, award, finding, or
19 decree shall be discharged of record.

20 **(3) A release shall be filed with the compensation court**
21 **executed by the employee or his or her dependent's representative,**
22 **as well as by the employee's attorney, which is a full and complete**
23 **discharge from further liability for the employer on account of the**
24 **injury or death, including future medical expenses, unless future**
25 **medical expenses are specifically excluded from the release.**

1 The release shall contain a statement verified by the
2 employee or his or her dependents that the employee understands
3 completely and waives all rights under the Nebraska Worker's
4 Compensation Act, specifically:

5 (a) The right to receive weekly disability or death
6 benefits, both temporary and permanent;

7 (b) The right to request vocational rehabilitation
8 services;

9 (c) The right to medical and related expenses; and

10 (d) The right to ask a judge of the compensation court
11 to decide the parties' rights and obligations. The release shall
12 provide for a full and complete discharge and shall be made on a
13 form approved by the compensation court.

14 (4) The fees of the clerk of the compensation court
15 for filing, docketing, and indexing an application for an order
16 approving a settlement or agreement or filing a release shall be
17 fifteen dollars. The fees shall be remitted by the clerk to the
18 State Treasurer for credit to the Compensation Court Cash Fund.

19 Sec. 3. Section 48-140, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 48-140 All settlements by agreement of the parties with
22 the approval of the Nebraska Workers' Compensation Court under
23 section 48-139 and all awards of compensation made by the
24 compensation court, except those amounts payable periodically,
25 shall be final and not subject to readjustment. ~~÷ PROVIDED, ne~~

1 ~~settlement shall be final unless it is in conformity with the~~
2 ~~Nebraska Workers' Compensation Act and approved by order of the~~
3 ~~compensation court pursuant to section 48-139.~~

4 Sec. 4. Section 48-141, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 48-141 All amounts paid by an employer or by an insurance
7 company carrying such risk, as the case may be, and received by the
8 employee or his or her dependents by lump-sum payments, ~~approved by~~
9 ~~order~~ pursuant to section 48-139, shall be final, but the amount
10 of any agreement or award payable periodically may be modified as
11 follows: (1) At any time by agreement of the parties with the
12 approval of the Nebraska Workers' Compensation Court; or (2) if
13 the parties cannot agree, then at any time after six months from
14 the date of the agreement or award, an application may be made by
15 either party on the ground of increase or decrease of incapacity
16 due solely to the injury or that the condition of a dependent
17 has changed as to age or marriage or by reason of the death of
18 the dependent. In such case, the same procedure shall be followed
19 as in sections 48-173 to 48-185 in case of disputed claim for
20 compensation.

21 Sec. 5. Original sections 48-138, 48-139, 48-140, and
22 48-141, Reissue Revised Statutes of Nebraska, are repealed.